IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.103 OF 2007

Shri.Jivanlal R. Tank ...Applicant.

Versus

Shri.Gopal Agarwal
and Anr. ...Respondents.

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Mr.Prakash Naik with Mrs.R.R.Dhuru, Advocates for the Applicant.
Mr.A.J.Phaujdar, Adv. h/f. Shri. A. M. Chimalkar,Adv. for Respondent No.1.
Mrs.A.S.Pai, APP, for Respondent No.2-State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 14th March, 2007.

P.C.:

1. Heard the learned Advocate for the applicant-orig.accused, the learned Advocate for respondent No.1-orig.complainant and the learned APP for the State.

2. The applicant has been convicted for the offence punishable under Section 138 of N.I.Act by the learned M.M., 7th Court, Dadar, Mumbai by order dated 16.8.2006 in Case No.1934/SS/2005. By the said judgment and order, the applicant was

sentenced to S.I. for three months and also to pay fine of Rs.10,000/-, in default S.I. for two months.

3. Being aggrieved by the said order the applicant preferred Criminal Appeal No.177 of 2006 before the Sessions Court. Respondent No.1-orig.complainant also preferred Criminal Revision Application No.275 of 2006 as no compensation was paid to complainant. Both these matters were disposed of by the learned Sessions Judge by common judgment and order dated 27.02.2007. By the said judgment and order dated 27.02.2007 the Appeal preferred by the applicant came to be dismissed and the Criminal Revision Application preferred by the orig.complainant came to be partly allowed. Conviction under Section 138 of N.I.Act was confirmed. The sentence of imprisonment of S.I. for three months was reduced to S.I. for one month. The sentence to pay fine of Rs.10,000/- imposed by the learned Magistrate was altered and the applicant was ordered to pay compensation of Rs.2,15,000/-, in default S.I. for three months. The learned Sessions Judge also directed that the amount of Rs.1,00,000/-

deposited by the applicant be paid to the original complainant after the revision period is over.

4. During hearing of this Revision, the complainant and the applicant-orig.accused have decided to settle the matter amicably. The applicant has agreed that the complainant be allowed to forthwith withdraw the amount of Rs.1,00,000/- which was deposited by the applicant before the trial Court. He has further stated that as far as the balance amount of Rs.1,15,000/- is concerned, he will give the said amount to the complainant by way of five equal monthly instalments of Rs.23,000/- each. The said instalments shall be payable by way of Demand Draft/Pay Order, before 15th day of each month. The first instalment will start latest by 15th April, 2007 and the last instalment shall be paid latest by 15th August, 2007.

5. The learned Advocate for Respondent No.1-orig.complainant, on instructions, states that if he is allowed to withdraw Rs.1,00,000/- which has been deposited by the applicant in the trial Court and if the remaining amount of

Rs.1,15,000/- is given to him by the applicant as stated above, the complainant is agreeable to the conviction being quashed and the applicant-accused being acquitted therein.

6. In view of the above, the respondent No.1-orig.complainant is allowed to withdraw Rs.1,00,000/- deposited by the applicant before the trial Court. The applicant shall pay the respondent No.1-orig.complainant remaining amount of Rs.1,15,000/- by way of five equal monthly instalments, as stated above. In view of this, the proceedings against the applicant are quashed and he is acquitted therein. Bail bonds of the applicant shall stand cancelled.

7. However, it is made clear that if the applicant fails to pay the balance amount of Rs.1,15,000/- by 15th August, 2007, the order of the Sessions Judge shall stand revived.

8. It may be stated here that the learned Magistrate had imposed fine amount of Rs.10,000/-. The said fine amount has been deposited by the applicant. The learned Sessions Judge has

set-aside the fine amount as imposed by the learned Magistrate. In this view of the matter after 15th August, 2007, the applicant is allowed to withdraw the said amount of fine Rs.10,000/- which has been deposited by him. It is made clear that the applicant can withdraw the said amount only after complying with the above conditions.

9. Criminal Revision Application is disposed of accordingly.

10. Authenticated copy of the order be supplied to the concerned, expeditiously.

(SMT.V.K.TAHILRAMANI,J.)